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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,009	12/30/2003	Jason Mittelstaedt	55564.104612	6492
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HUSCH BLACKWELL SANDERS LLP			EXAMINER	
4801 Main Street			VU, VIET DUY	
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KANSAS CITY, MO 64112			ART UNIT	PAPER NUMBER
			2454	
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			11/04/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,009

Applicant(s)

MITTELSTAEDT ET AL.

Examiner

Viet Vu

Art Unit

2454

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 7, 14 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Art Rejections:

1. The texts of 35 U.S.C. 103(a) cited in the previous office action are hereby incorporated by reference.
2. Claims 1-6, 8-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumann, U.S. pat. Appl. Pub. No. 2004/0153360 in view of Walker et al, U.S. pat. No. 6,978,248.

Per claim 1, Schumann discloses a method of sending an electronic mail message to members of a mass audience each connected to a network comprising:

- a) creating a plurality of test messages each having a message content identical in each test message and a plurality of characteristics that may vary (e.g., recipient addresses), each test message varying from all other test messages in at least one of said characteristics and wherein each type of test messages are sent to a group/subgroup of audiences (see par. 42);
- b) storing said message content and retrieving said message content from storage for inclusion in each test message (par. 47);
- c) sending each test message on the network to different members of said mass audience with all of the test messages

together being sent to a minority of the members of said audience (par. 42 and 47);

d) evaluating feedback as to the effectiveness of each test message (par. 38);

e) creating a final message based on the evaluation of the feedback (par. 39 and 44); and

f) sending said final message on the network to all members of said audience (see par. 39).

Schumann does not teach paying a special sub group of users for testing the messages. The use of such paid users for evaluating message effectiveness is known in the art as disclosed by Walker (see Walker in col 5, lines 3-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a separate subgroup of paid users for testing messages in Schumann because paid users would have provided more complete response than non-paid users and hence enabled the testing to be done more accurately.

Per claims 2-5, it is noted that a conventional email message comprises different fields including address, date/time and subject.

Per claim 6, Walker teaches randomly selecting users for receiving the test (see Walker in col 3, lines 38-44).

Claims 8-13 and 15-19 are similar in scope as that of claims 1-6.

Allowable Subject Matter:

3. Claims 7, 14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment:

4. Applicant's arguments filed on October 20, 2008 with respect to claims 1-6, 8-13, and 15-19 have been fully considered but are moot in view of new ground of rejection set forth above.

Conclusion:

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is 571-272-3977. The examiner can normally be reached on Monday through Friday from 7:00am to 4:00pm. The Group general information number is 571-272-2100. The Group fax number is 571-273-8300. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on 571-272-1915.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Viet Vu/

Primary Examiner, Art Unit 2454

10/31/08